IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/2/2006

C O R A M

THE HONOURABLE Mr.JUSTICE K.MOHAN RAM

Writ Petition NO.4845 of 2006

M/s.Cameo Engineering Services
(P) Ltd
rep. by its Director
No.15, Reddy Street,
Chennai 600 092. ... Petitioner

vs

1. The Deputy Commissioner (CT)
Chennai (South) Division
Greams Road
Chennai 6.

2. The Deputy Commercial Tax Officer
Porur Assessment Circle
Porur, Chennai 87. ... Respondents.

Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus as stated therein.

For petitioner ... Mr.R.Mahadevan
For respondents ... Mr.S.Manohar Sundaram

O R D E R

By consent, the main writ petition itself is taken up for final disposal.

2. Writ Petition is to call for the records of the first respondent in R.P.No.11/2004 quash the order dated 30/11/2005 and direct the second respondent to revise the order in TNGST 1380776/97-98 dated 30/11/1998 as far as the levy of Additional Sales Tax is concerned in accordance with Section 2 (1) (aa) of the TNAST Act 1970.

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3. The short facts of the case are as follows:-

The second respondent passed an assessment order dated 30/11/1998 for the assessment year 1997 - 98, during the relevant period additional sales tax could be levied if the turnover crosses Rs.100 crores, but the petitioner's turnover was less than 100 crores. By mistake, additional sales tax at 2.5% was collected. Hence the petitioner submitted a petition under Section 55 of the TNGST Act for rectification of the error. But the petition was rejected by the second respondent by his order dated 18/11/2003 and directed the petitioner to prefer an appeal. Aggrieved against the same, the petitioner had filed a petition before the first respondent in R.P.No.11/2004. The first respondent also rejected the revision petition by his order dated 30/11/2005 and directed the petitioner to file an appeal before AAC. Aggrieved against the said order, the petitioner had filed the above writ petition.

4. The learned counsel appearing on behalf of the petitioner would submit that in the light of the order passed by K.Govindarajan,J in Writ Petition NO.17312 of 2001 dated 29/10/2001 (SRI JALARAM TRADING CO., Vs. THE DEPUTY COMMERCIAL TX OFFICER, CENTRAL II, TIRUPUR), the order of the first respondent is liable to be set aside.

5. Mr.Manohar Sundaram learned Government Advocate took notice on 21/2/2006 and after getting instructions submits that the said judgment of K.Govindarajan,J squarely applies to the facts of the case on hand.

6. Following the above said decision, the order of the first respondent is quashed. When the assessing authority itself is having jurisdiction under Section 55 of TNGST Act, he himself should consider the petitioner's application filed under Section 55 of the Act on merits and in accordance with law.

7. With the above direction, this writ petition is allowed. No costs.

mvs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

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   Chennai (South) Division
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2. The Deputy Commercial Tax Officer
   Porur Assessment Circle
   Porur
   Chennai 87.

+ 1 cc to Mr.R. Mahadevan, Advocate SR No.8734

GG(CO)
SR/8.3.2006

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